

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PAINTERS DISTRICT COUNCIL
NO. 58, et al.,

Plaintiffs,

v.

MJ INTERIOR FINISHES AND
CONSTRUCTION MANAGEMENT
LLC, formerly known as MJ Painting
LLC, et al.,

Defendants.

No. 4:22 CV 405 CDP

MEMORANDUM AND ORDER

Plaintiffs bring this action under the Employee Retirement Income Security Act, 29 U.S.C. § 1132(g)(2) (ERISA), and the Labor Management Relations Act, 29 U.S.C. § 185 (LMRA), to recover delinquent fringe benefit contributions that defendant MJ Interior Finishes and Construction Management LLC and its owner and guarantor, defendant Michael Parran, owe to the plaintiff employee benefit funds. Plaintiffs move for default judgment, seeking a money judgment for unpaid contributions owed to the funds as well as liquidated damages, attorneys' fees, and costs. Because the evidence submitted with the motion does not support the requested amount of judgment, I will deny the motion for default judgment. I will, however, provide plaintiffs an opportunity to cure their deficiencies.

Background

Plaintiffs are Painters District Council 58 (Union), four employee benefits plans – St. Louis Painters Pension Trust, St. Louis Painters Welfare Trust, St. Louis Painters Vacation Trust, and the Finishing Trades Institute of Midwest Trust (Trust Funds) – and their respective trustees, sponsors, and/or fiduciaries. Plaintiffs filed their complaint on April 6, 2022, alleging that since July 2021 defendant MJ Interior was bound by a collective bargaining agreement (CBA) wherein it agreed to be bound to the various Trust Fund agreements and to make weekly reports, weekly contributions to the Trust Funds, and remit dues to the Union. Plaintiffs assert that MJ Interior failed and refused to pay all of the known contributions and dues required under the CBA. The complaint further alleges that defendant Parran failed to meet his obligation as guarantor to pay such contributions and dues.

On August 23 and October 5, 2022, the Clerk of Court entered orders of default against MJ Interior and Parran, respectively, after they failed to file an answer or other responsive pleading within the time required after being served with process. On October 11, 2022, I granted plaintiffs' motion to compel an accounting, and I ordered defendants to submit to a financial examination. Defendants did not comply with my Order. On April 12, 2023, after providing defendants notice and an opportunity to be heard, I granted plaintiffs' motion to

hold defendants in civil contempt. Plaintiffs thereafter received defendants' banking records and, according to plaintiffs, defendants admitted they owed amounts based on contribution reports they submitted with no payment. Plaintiffs now ask me to enter default judgment against the defendants and have submitted affidavits and other evidence in support of their request. Plaintiffs have also submitted a proposed judgment.

Discussion

After default has been entered against a defendant, the defendant is deemed to have admitted all well-pleaded factual allegations in the complaint. *See Taylor v. City of Ballwin*, 859 F.2d 1330, 1333 (8th Cir. 1988). While factual allegations in the complaint are generally taken as true, those allegations relating to the amount of damages must be proven to a reasonable degree of certainty. *Everyday Learning Corp. v. Larson*, 242 F.3d 815, 818 (8th Cir. 2001); *Stephenson v. El-Batrabi*, 524 F.3d 907, 916-17 (8th Cir. 2008). Evidence and supporting documents must provide a basis for the amount of damages sought by plaintiffs and awarded by the Court. *Stephenson*, 524 F.3d at 917.

In ERISA actions under 29 U.S.C. § 1132 that involve delinquent contributions, a judgment for the prevailing plan(s) includes the amount in unpaid contributions; an amount equal to the greater of interest on the unpaid contributions or, as relevant here, liquidated damages provided for under the plan

in an amount not to exceed 20 percent of the amount in unpaid contributions; and reasonable attorneys' fees and costs of the action. 29 U.S.C. § 1132(g)(2). In their motion for default judgment here, plaintiffs seek to recover \$15,052.73 from defendants, which comprises \$3901 in unpaid contributions for weeks ending July 29, 2022, through August 26, 2022; \$780.20 in liquidated damages; \$9790 in attorneys' fees; and \$581.53 in costs.

Unpaid Contributions and Liquidated Damages

Plaintiffs submitted the affidavits of Union Business Manager Carl Farrell and Trust Fund Plan Manager Rachel Allen who both attest that defendants owe \$3901 in unpaid principal contributions for the five-week period for which plaintiffs seek judgment. They also attest that defendants owe \$780.20 in liquidated damages on the unpaid contributions.¹ (ECF 37-2, 37-9.) Submitted with Allen's affidavit are five contribution reports from which she made her calculations. (ECF 37-10.) From my review, however, the reports do not support the calculations or the amounts plaintiffs seek in their motion.

Regarding unpaid contributions, the face value total of the "amount due" – that is, without performing the underlying calculations for each separate amount based on the rate-per-hour formulas – is \$3800.65, not \$3901. And each of the five reports appears to contain an error as to the amount due to the Foundation

¹ This amount equals 20% of \$3901.

Fund: the rate-per-hour formula of $\$0.26 \times 40$ hours equals $\$10.40$, not $\$10.00$ as indicated on the reports. Finally, the report for “Work Performed During: 08/19/2022” shows $\$318.20$ as the amount due to the Pension DB Fund. However, applying the formula for that Fund – that is, $\$7.96 \times 40$ – yields an amount due of $\$318.\underline{40}$, not $\$318.20$. When the underlying math errors are corrected, the total amount due appears to be $\$3802.85$, which continues to not equal the $\$3901$ that Farrell and Allen attest to. I cannot say, therefore, that the affidavits and evidence submitted in the case support the amount in unpaid contributions plaintiffs seek.

Regarding liquidated damages, the CBA provides that they be calculated as follows: 10% on delinquent contributions up to the first 30 days of the delinquency, after which they are calculated at a rate of 1-1/2 % compounded monthly until the contributions are fully paid. (ECF 37-2, Farrell Affid. at ¶ 13; ECF 37-3, CBA at § 4.) As set out above, ERISA provides that liquidated damages be paid in accordance with the terms of the plan and cannot not exceed 20% of the amount in unpaid contributions. 29 U.S.C. § 1132(g)(2)(C)(ii). The $\$780.20$ that plaintiffs seek in liquidated damages equals 20% of the $\$3901$ in unpaid contributions plaintiffs claim are due. But it is not clear that liquidated damages would approach 20% of unpaid contributions in this action if they were calculated under Section 4 of the CBA. *See id.* (court shall award liquidated damages “provided for under

the plan”). Regardless, because the claimed amount of \$3901 in unpaid contributions is not supported by the evidence, the requested liquidated damages based on a percentage of that amount is likewise not supported.

Attorneys’ Fees and Costs

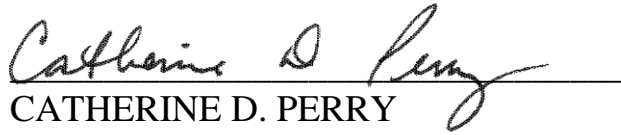
Plaintiffs also seek judgment for attorneys’ fees and costs totaling \$10,371.53. Plaintiffs have submitted the affidavit of attorney Matthew J. Gierse who attests to the applicable hourly billing rate, the details of the legal work performed, and the time expended, which results in legal fees totaling \$9790. (ECF 37-11.) Gierse also attests that plaintiffs have or will be billed costs in this action totaling \$581.53, but he provides no explanation for the costs other than a one-page list that comprises one entry for the Court’s filing fee and seven unexplained entries of amounts paid to Frederick Investigations. (*Id.*; *see* ECF 37-12.) And of the seven Frederick Investigations entries, two are made on the same date (09/08/22) and denote payment with the same check number (#2417) but in different amounts (\$70.70 and \$77.31). Both amounts are included in the “Grand Total” of \$581.53 for billed costs. With no explanation of the Frederick Investigations costs and the apparent duplicative entries, I cannot say that plaintiffs have adequately demonstrated the reasonableness of the costs they seek to recover.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs’ Motion for Default Judgment

[37] is denied without prejudice.

IT IS FURTHER ORDERED that within ten (10) days of the date of this Order, plaintiffs shall resubmit their motion for default judgment, with appropriate evidence and affidavits in support – particularly regarding the amount in unpaid contributions, liquidated damages under the terms of the CBA, and costs incurred in this action. Plaintiffs shall also submit a proposed judgment for my consideration.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 27th day of July, 2023.